

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this amendment, claims 1-23 will be pending in the present application. Claims 22 and 23 have been added.

The disclosure stands object to due to an informality on page 7, paragraph 31 of the specification. To correct this deficiency, the specification has been amended as suggested by the Examiner. In particular, the reference numeral associated with the sample collection portion has been changed to "14". The specification has also been amended to correct a minor typographical error and to correct the numbering of the paragraphs on page 18 of the specification. Accordingly, applicant respectfully requests that the objection to the disclosure be withdrawn.

Claims 1-21 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,221,474 to Yokono et al ("the '474 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

Independent claim 1 has been amended to clarify that the gas sampling assembly of the present invention includes a (1) filter portion, which includes a housing, and (2) a sample collection portion, which includes a body section having a sample chamber defined therein. The body section is coupled to the downstream second end of the housing such that the housing and the body section define a unitary assembly. In addition, claim 1, as amended, recites that the body section includes an *energy transmissive portion* that allows a constituent of a gas that is in the sample chamber to be monitored by passing energy through the energy transmission portion of the body section.

An example of such an energy transmissive portion is window A or B in the body section 28 of the sample cell portion 14 of the gas sampling assembly 10 that allows energy, such as IR radiation, to pass through chamber 30 and, hence, through the gas contained in chamber 30, as indicated by arrow C, so that the constituents of the gas in chamber 30 can be measured. FIG.

2 from the present application is reproduced below for the Examiner's convenience in understanding this feature of the present invention

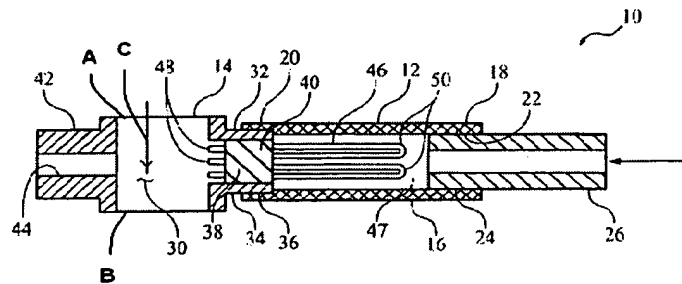
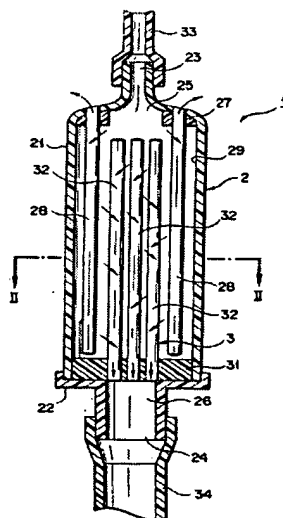


FIG. 2

Of course, the present invention contemplates other configurations for the energy transmissive portion, and claim 1 does not require that there be two such portions, i.e., two windows, as shown in FIG. 2. Applicant respectfully submits that the '474 patent does not teach or suggest a gas sampling assembly having these features.

The '474 patent pertains to a transfusion filtering device 1 that includes a housing 21 containing hydrophilic membranes 32. The transfusion filtering device includes an inlet 23 and outlet 24 that connect to "pipes" 33 and 34, respectively. The function of transfusion filtering device 1 is to filter fluid being transfused to a patient so that the recipient does not receive contaminants. A copy of FIG. 1 from the '474 patent is provided below.



Nothing in the '474 patent teaches or suggests that the transfusion filtering device 1 includes a sample collection portion having the features recited in amended independent claim 1 because the '474 patent does not teach or suggest monitoring the constituents of the substance that passes through the filter.

The Examiner alleges that portion 26 of transfusion filtering device 1 in the '474 patent corresponds to the claimed sample collection portion. Applicant respectfully disagrees. Portion 26 of transfusion filtering device 1 taught by the '474 patent lacks any features that enable the gas in portion 26 to be monitored by passing energy through an energy transmission portion of the body section. In short, the '474 patent does not include a body section that has an *energy transmissive portion* as recited in claim 1. In addition, it would not be obvious to modify the teachings of the '474 patent to include such features, because nothing in the cited references teaches such a modification. Moreover, because the filtering device of the '474 patent is used to filter fluids being transfused to a patient, one skilled in the art would not be motivated to monitor a constituent of a substance, especially a gas, passing through the filter. The need for such monitoring is simply not found in transfusion systems. Moreover, gas is not passed to a patient during a transfusion. Thus, a gas monitoring capability is not needed in a transfusion system.

Independent claim 12 recites a sidestream gas monitoring system that includes (a) a sampling line for carrying a flow of gas from a patient circuit, (b) a gas sampling assembly, and (c) a detecting system that measures a constituent of gas contained within the sample chamber in the gas sampling assembly. Applicant submits that the '474 patent does not teach or suggest a sidestream gas monitoring system that includes these features. For example, the '474 patent does not teach or suggest a detecting system that is adapted to measure a constituent of gas contained within a sample chamber.

According to the Examiner, the '474 patent discloses a monitoring system having these features. However, the Examiner has not indicated where these features are found in the '474 patent. Applicant submits that such features are completely lacking from the '474 patent, because the filtering element of this patent pertains to a transfusion filter and not a filter in a gas monitoring system. If the Examiner continues to maintain the rejection of claim 12 based on the

RICH -- Appln. No.: 10/678,692

'474 patent, applicant respectfully requests that the Examiner clearly identify where each feature of claim 12 is found in this reference.

For the reasons presented above, applicant respectfully submits that independent claims 1 and 12 are not rendered obvious by the cited references. In addition, claims 2-11 and 13-21 are also not rendered obvious due to their dependency from independent claims 1 or 12. Accordingly, applicant respectfully requests that the above rejection of claims 1-21 be withdrawn.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

By Michael W. Haas
Michael W. Haas
Reg. No.: 35,174
Tel. No.: (724) 387-5026
Fax No.: (724) 387-5021

RESPIRONICS, INC.
1010 Murry Ridge Lane
Murrysville, PA 15668-8525